

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**RECEIVED
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Application No. : 09/998,855
Applicant : Agapios Agapiou et al.
Filed : November 15, 2001
Art Unit : 1755
Examiner : Pasterczyk, James W.

Confirmation No. 6866

JUL 26 2004

Docket No. : 2000U055.US
Customer No. : 25959

Date : July 26, 2004

OFFICIAL

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Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. § 1.181

Sir:

Applicant's Petition for withdrawal of the Final Rejection, mailed May 24, 2004, as premature.

ISSUE

Whether the Final Rejection, issued on the Third Office Action in the above referenced case, is premature.

FACTS

- i) A Second, Non-Final Action was issued April 20, 2004 Rejecting claims 1,3 5-7, and 19-22. Applicants responded May 7, 2004, with a Response under 37 C.F.R. § 1.111.
- ii) A Third Action, mailed May 24, 2004, was made Final.

2000U055.US.Petition.07.26.04.doc

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USSN 09/998,855

Petition Dated July 26, 2004

Response to Office Action Dated: May 24, 2004

- iii) The Third Action referred to in ii), contained new rejections, based on two newly cited documents (US 4,397, 761, or in the alternative, US 5,075,394).
- iv) In the Response referred to in i) above, Applicants amended independent claims 1 and 6, and cancelled claim 2, 4, 7 and 8. The amendment to independent claims 1 and 6 incorporates verbiage from cancelled claims 2, and 8 further defining the gelling agent of claims 1 and 6 respectively. A second amendment to claims 1 and 6 was adding "alkyl" as a modifier to "quaternary ammonium salts". Two new claims (21 and 22) were added, further limiting the catalyst of claims 1 and 6 respectively

ARGUMENT

The making Final of the Third Action is in error, based on iv) above, for the following reason:

The new 35 U.S.C. § 103 rejection was stated to be based on an amendment to the claims made by Applicants. MPEP 706.07(a) is clear that a Final Rejection is proper "... except where the examiner introduces new ground of rejection not necessitated by amendment of the application by applicant ...". Applicants' amendments to the present claims, were all either specific embodiments in front of the Examiner at the time of the second non-final action as dependent claims, or the amendments represent embodiments not addressed by the newly cited documents. The new claims were (claims 21 and 22 dependent to independent claims 1 and 6), introduced further limitation to the catalyst element of the independent claims, and again, by further limiting a broader claim such embodiments (based on the disclosure of the Specification) were in front of the Examiner before introduction of the new claims. No quaternary ammonium salts are disclosed by the newly cited documents, so the inclusion of the word "alkyl" as a modifier to "quaternary ammonium salts" would not appear to be addressed by the new Rejection. No broader subject matter was introduced by Applicants' amendments.

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CONCLUSION

The facts, outlined above, do not support a proper Final Rejection. Based on the above, the Action made Final was premature.

Accordingly, Applicants respectfully Petition to have the Finality reversed, with a new time for response set.

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USSN 09/998,855

Petition Dated July 26, 2004

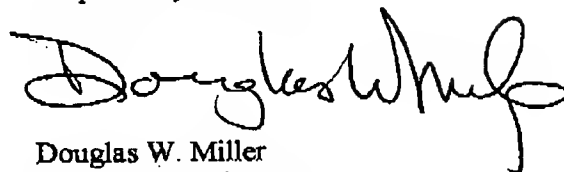
Response to Office Action Dated: May 24, 2004

Note is made that the correspondence should be sent to

Douglas W. Miller
In representation of Univation Technologies, LLC
c/o Judith A. Kruger
5555 San Felipe, Suite 1950
Houston, Texas 77056
Facsimile: 713.892.3687

However the telephone number for Douglas W. Miller is (713) 780-7799.

Respectfully submitted,



Douglas W. Miller
Agent for Applicants
Registration No. 36,608

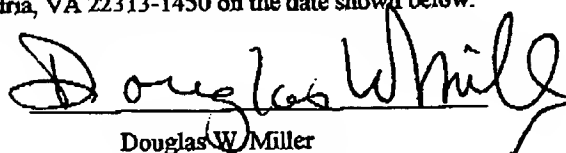
Southwest Patent Services
510 Bering Drive, Suite 300
Houston, Texas 77057
(713) 780-7799

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

July 26, 2004

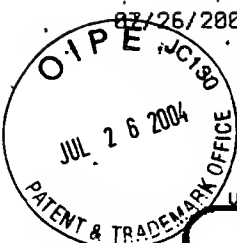
Date



Douglas W. Miller
Registration No. 36,608

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PTO/SB/17 (11-01)
Approved for use through 10/31/2002. OMB 0651-0032
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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL for FY 2002 <small>Patent fees are subject to annual revision.</small>		Complete if Known	
		Application Number	09/998,855
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Filing Date	November 15, 2001
		First Named Inventor	Agapiou, K. Agapiou
		Examiner Name	James W. Pastelczyk
TOTAL AMOUNT OF PAYMENT (\$)		30.00	Attorney Docket No. 20000555, US

METHOD OF PAYMENT (check all that apply)		FEE CALCULATION (continued)																																																																																																																																																																																									
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The Commissioner is authorized to: (check all that apply) <input checked="" type="checkbox"/> Charge fee(s) indicated below <input checked="" type="checkbox"/> Credit any overpayments <input type="checkbox"/> Charge any additional fee(s) during the pendency of this application <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee to the above identified deposit account		<table border="1"><thead><tr><th colspan="2">Large Entity</th><th colspan="2">Small Entity</th><th rowspan="2">Fee Description</th><th rowspan="2">Fee Paid</th></tr><tr><th>Fee Code</th><th>Fee (\$)</th><th>Fee Code</th><th>Fee (\$)</th></tr></thead><tbody><tr><td>105</td><td>130</td><td>205</td><td>85</td><td>Surcharge - late filing fee or oath</td><td></td></tr><tr><td>127</td><td>50</td><td>227</td><td>25</td><td>Surcharge - late provisional filing fee or cover sheet</td><td></td></tr><tr><td>139</td><td>130</td><td>139</td><td>130</td><td>Non-English specification</td><td></td></tr><tr><td>147</td><td>2,520</td><td>147</td><td>2,520</td><td>For filing a request for ex parte reexamination</td><td></td></tr><tr><td>112</td><td>920*</td><td>112</td><td>920*</td><td>Requesting publication of SIR prior to Examiner action</td><td></td></tr><tr><td>113</td><td>1,840*</td><td>113</td><td>1,840*</td><td>Requesting publication of SIR after Examiner action</td><td></td></tr><tr><td>115</td><td>110</td><td>215</td><td>55</td><td>Extension for reply within first month</td><td></td></tr><tr><td>116</td><td>400</td><td>216</td><td>200</td><td>Extension for reply within second month</td><td></td></tr><tr><td>117</td><td>920</td><td>217</td><td>460</td><td>Extension for reply within third month</td><td></td></tr><tr><td>118</td><td>1,440</td><td>218</td><td>720</td><td>Extension for reply within fourth month</td><td></td></tr><tr><td>128</td><td>1,960</td><td>228</td><td>980</td><td>Extension for reply within fifth month</td><td></td></tr><tr><td>119</td><td>320</td><td>219</td><td>160</td><td>Notice of Appeal</td><td></td></tr><tr><td>120</td><td>320</td><td>220</td><td>160</td><td>Filing a brief in support of an appeal</td><td></td></tr><tr><td>121</td><td>280</td><td>221</td><td>140</td><td>Request for oral hearing</td><td></td></tr><tr><td>138</td><td>1,510</td><td>138</td><td>1,510</td><td>Petition to institute a public use proceeding</td><td></td></tr><tr><td>140</td><td>110</td><td>240</td><td>55</td><td>Petition to revive - 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SUBMITTED BY		Complete if applicable	
Name (Print/Type)	Douglas W Miller	Registration No. (Attorney/Agent)	36,608
Signature	<i>Douglas W Miller</i>	Telephone	713.780.7740
		Date	July 26, 2003

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